

**DRAFT**  
**Response to comments from Earl Pabst**  
**Environmental Services Program, MDNR**  
**Received by Memorandum**  
**4-18-05**

**General Comments:**

1. *When dealing with sediments/soils, the only way to allow analytical results to be comparable with one another or to established criteria is to normalize them to a benchmark. The established benchmark that is universally used is “dry weight basis”. The ESP laboratory reports sediment/soil samples on a dry weight basis. We would recommend adding this requirement where applicable throughout the guidance document.*

**Response:** All soil data must be reported on a dry weight basis and all soil target levels are calculated on a dry weight basis. We will add a statement into Appendix E that states that sediment/soil data must be reported on a dry weight basis.

2. *Several terms are used in the document that are not defined in Appendix L. We would recommend that you consider defining these terms.*

**Response:** We plan to strengthen the glossary with additional terms. If you have specific terms that you believe should be in the glossary, please let us know.

**Specific Comments:**

1. *The Environmental Services Program (ESP) is listed in the second paragraph of Section 1.1 as one of several programs that "are often involved in risk management decisions", which is accurate. However, in Section 3.0 Remediation Authorities in Missouri, where the specific departmental program roles are discussed, the ESP is not included. We would recommend that the department's authority in enforcing Section 260.500 - 260.550, RSMo and 10 CSR 24-1.010 through 3.010 should be discussed in Section 3.0. There are some sites where the ESP continues to have responsibility to ensure the site is remediated. This can and has involved a risk-based cleanup. We would be happy to provide some language to include.*

**Response:** The following language will be included as Section 3.2.5.

**3.2.5 Environmental Services Program, Air and Land Protection Division**

The Environmental Services Program's Environmental Emergency Response (ESP EER) Section operates under the authority of the Missouri "Spill Bill" Sections 260.500 through 260.550 RSMo. ESP EER ensures cleanups are conducted when hazardous substance emergencies occur. Under the "Spill Bill", the person having control over a

hazardous substance, typically referred to as the responsible party, is required to report a release either to the 24-Hour Environmental Emergency Response Spill Line (573-634-2436) or the National Response Center (800-424-8802). The “Spill Bill” also requires responsible parties to conduct cleanups whenever they have a hazardous substance emergency.

The ESP EER maintains the 24-Hour EER Spill Line, provides technical assistance and on-site responses. Once a hazardous substance emergency occurs, the ESP EER ensures the impact to the public health and the environment is mitigated in a timely fashion. The department may issue a “Hazardous Substance Emergency Declaration” which outlines the actions required by the responsible party to adequately address the emergency and conduct the cleanup. If the responsible party does not conduct the actions needed to address a hazardous substance emergency in a timely manner, the “Spill Bill” gives the department the authority to initiate a “state lead” cleanup. The Spill Bill also allows the department to recover costs incurred for actions taken to ensure a cleanup is conducted from the responsible party.

If the site requires long term remediation after the emergency phase of a release has been addressed (free product recovery, removal of impacted soil, safe drinking water supply provided, etc.), the ESP EER may continue to oversee the remediation work or transfer the EER incident site to another department program that may have regulatory authority, such as the Hazardous Waste Program Tanks Section if appropriate.

2. *Section 2.2.2 is problematic and may cause confusion. First, this section implies that a responsible party must report a hazardous substance release if it meets any of the six bullet statements. A responsible party is required to report a hazardous substance release in accordance with Section 260.500 (5), RSMo not the bullet points in Section 2.2.2.*

*The examples of abatement measures listed in this section appear to be all inclusive and definitive. In the event of a significant environmental emergency, the department issues a hazardous substance emergency response declaration. This legal document defines the immediate steps including any reports to be taken by the responsible party to end the environmental emergency.*

*We have attached a draft, revised narrative for this section which clarifies the requirements in Section 260.500-550, RSMo.*

*Finally, you might want to consider incorporating Section 2.2.2 into the Section 4.0 on the Management of Imminent Threats. This would appear to be a better fit.*

**Response:** Section 2.2.2 is an overview. Therefore, we will retain the following sentences in the overview (mostly taken from your narrative) and move the remaining information into Section 4.0, as you suggest.

### 2.2.2 Determination and Abatement of Imminent Threat(s)

Upon discovery that a site may contain potential contamination, all available information must be carefully evaluated to determine if the site poses any imminent threat to human health, safety or the environment. If any imminent threats are discovered, the department must be informed immediately. The state statute for spill reporting is commonly known as the “Spill Bill” and is found in Sections 260.500 through 260.550 RSMo.

If the department or the responsible party/remediating party identifies any imminent threat to human health, safety or the environment, the department may require the person having control over the hazardous substance to clean up the hazardous substance and take any reasonable actions necessary to end a hazardous substance emergency.

If requested, a written report must be submitted to the department that documents the activities and confirms that all imminent threats have been abated. The responsible party may also be requested to include recommendations for any additional work necessary for the continued protection of human health and the environment.

3. *Section 2.2.3 states that upon completion of any environmental response action, an initial characterization must be completed. This assumes that every environmental response action is an imminent threat and the responsible party intends to conduct a risk-based cleanup. That is rarely the case. In the majority of the hazardous substance releases, the responsible party cleans up the site and the incident is closed. For example, in a 200-gallon diesel spill from a tractor-trailer accident contained on the highway right-of-way, the responsible party would remove any remaining free product and excavate the contaminated soil. No further action is normally required. In the case of a leaking 55-gallon drum of solvent at a paint factory, the solvent is cleaned up and properly disposed of. There is no risk-based cleanup necessary and the guidance and rule would not apply.*

*This is not clear in Section 2.2.3.*

**Response:** We will clarify the guidance to include this point. Please see the information below. This information will also be added into Section 4.0.

“In the majority of hazardous substance releases, the responsible party conducts a cleanup and the site is closed. If the site is not closed, the responsible party may be required to perform an *Initial Characterization*. If the release is a hazardous substance emergency, the responsible party is required to conduct emergency response actions to mitigate the impact to public health and the environment. The responsible party may be required to perform an *Initial Characterization* as part of an emergency response action.”

4. *In Section 4.2, both a "hazardous substance" and a "hazardous substance emergency" are defined where the reporting requirements and imminent threats are discussed. However,*

*both definitions are inaccurate and incomplete. For clarity, it is suggested that the definitions be copied straight from Section 260.500, RSMo.*

**Response:** The definitions from Section 260.500, RSMo will be used.

5. *Also, Section 4.2 states that "upon completion and documentation of the emergency response activities, and if the release of a hazardous substance is confirmed, additional data may be needed to perform a risk-based evaluation and to receive a Letter of Completion". Again, the applicability of MRBCA to EER-directed cleanups is not clear. In the majority of incidents where the responsible party may consider a risk-based cleanup, the ESP would have already ended the environmental emergency and transferred the site to the appropriate regulatory program (e.g., HWP Tanks Section) for any long-term remediation required. It should also be pointed out that the ESP does not issue "Letters of Completion" or "No Further Action" letters.*

**Response:** This sentence will be removed from the guidance.

6. *Finally, Section 4.4 states that the "remediating party" must submit a "Hazard Abatement Report" after completion of the emergency response actions. This may be a requirement of the RBCA rule and guidance, but it is not a requirement in Section 260.500-550, RSMo. This needs to be clarified. You may also want to define this term in Appendix L.*

**Response:** We will remove this term from the guidance. We will clarify that the department may request documentation upon completion of an emergency response action.

**RSMo 260.500 Definitions**

"Hazardous substance", any substance or mixture of substances that presents a danger to the public health or safety or the environment and includes:

(a) Any hazardous waste identified or listed by the department pursuant to sections 260.350 to 260.430;

(b) Any element, compound, mixture, solution, or substance designated pursuant to Sections 101(14) and 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and Section 302 of the Superfund Amendments and Reauthorization Act of 1986, as amended; and

(c) Any hazardous material designated by the Secretary of the United States Department of Transportation pursuant to the Hazardous Materials Transportation Act;

(d) "Hazardous substances" does not include radioactive materials, wastes, emissions or discharges that are licensed or regulated by laws of the federal government or of this state.

However, such material released due to a transportation accident shall be considered a hazardous substance;

(6) "Hazardous substance emergency":

(a) Any release of hazardous substances in quantities equal to or in excess of those determined pursuant to Section 101(14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and Section 304 of the Superfund Amendments and Reauthorization Act of 1986, as amended;

(b) Any release of petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) in excess of fifty gallons for liquids or three hundred cubic feet for gases, except that the notification and reporting of any release of natural gas or natural gas mixtures by or from intrastate facilities, regardless of the quantity of such release, shall be as specified by the public service commission rather than pursuant to the notification and reporting requirements contained in, or authorized by, sections 260.500 to 260.550. Interstate natural gas pipeline facilities shall report natural gas releases to the state and the National Response Center in accordance with federal Department of Transportation regulatory requirements;

(c) Any release of a hazardous waste which is reportable pursuant to sections 260.350 to 260.430;

(d) Any release of a hazardous substance which requires immediate notice pursuant to Part 171 of Title 49 of the Code of Federal Regulations;

(e) The department may promulgate rules and regulations identifying the substances and the quantities thereof which, if released, constitute a hazardous substance emergency;